IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4453 of 1995

to

FIRST APPEALNo 4475 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

DY. COLLECTOR

Versus

CHAUDHARI AVCHALBHAI SHAMALA BHAI, DECD. THRO. HIS HEIRS

Appearance:

MR SJ DAVE, AGP for the Appellants

MR VS MODI for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT and

MR.JUSTICE C.K.BUCH

Date of decision: 20/04/98

ORAL COMMON JUDGEMENT (PER : Y.B.BHATT, J)

On a joint request of the ld. counsel for the respective parties, these appeals are taken up for final

hearing today.

2. These are the appeals filed by the State of Gujarat under Sec.54 of the Land Act read with sec.96 of the CP Code, challenging the common judgment and awards passed by the Reference Court under Sec.18 of the said Act.

3. The lands under acquisition in the instant case are situated in village Umedpura, Ta: Danta, Dist.: Banaskantha, and are acquired for Dharoi Irrigation Project under a notification issued under Sec.4 of the said Act dated 28.10.1972. The Land Acq.Officer, in his award under Sec.11 of the said Act, offered compensation at the rate of Rs. 8154/ per Hectare for irrigated lands, Rs. 5683/ per Hectare for non-irrigated lands and Rs.100/ per Hectare for Kharaba lands.

3.1 The claimants- original landholders, not having accepted the award, preferred Land References under Sec.18 of the said Act. The Reference Court, after recording evidence and after evaluating the same, determined the market value of the acquired lands at Rs. 200/ per Are. It is this judgment and awards which are the subject matter of the present appeals filed by the State.

4. The impugned judgment, taken in it overall perspective, in our opinion, not assailable. We agree with the assessment of the evidence on the part of the Reference Court, conclusions drawn therefrom and the findings of fact recorded.

5. However, we do not propose to dismiss the appeals merely on the aforesaid basis. We also propose to take into consideration a number of other decisions of this Court which are relevant and would form a guideline, atleast for the purpose of confirmation of the market value as determined by the Reference Court.

5.1 One such relevant decision is rendered by this very Bench in a acquisition for the very same project, of lands situated in village Santoda under a notification issued under Sec.4 of the said Act dated 23.5.1973. This decision is rendered in First Appeal Nos. 4721/96 to 4737/96 on 2.4.1998 whereby we had determined the market value of the acquired lands of village Santoda at Rs. 258/ per Are for irrigated lands. In the said decision, we had taken into consideration seven other relevant decisions of this Court, and had also taken note of the fact that all lands of these villages concerned have been acquired for the very same project, that all the villages

are of equal fertility and bear almost the same agricultural yield and that, therefore, their proximity of about 10 to 12 kms. from each other would not be of any significance. Thus, the only factor which would have relevance on the determination of the market value would be the date of Sec.4 notification. In the aforesaid decision of this Bench, Sec.4 notification was dated 23.5.1973 whereas in the instant case, it is dated 28.10.1972. Thus, the notification under Sec.4 in the instant case is earlier in point of time than the notification in the aforesaid decision by a period of slightly over six months. Thus, if six months after the instant notification the lands have been valued by us (in the said decision) at Rs. 258/ per Are for irrigated lands, the lands in the instant case valued by the Reference Court at Rs. 200/ per Are cannot possibly be considered to be an excessive valuation.

6. Another decision which is relevant, is a decision of this very Bench in First Appeal Nos. 3186/95 to 3190/95 decided on 2.4.1998 where we were concerned with the acquisition of lands for the very same project situated in village Vijalasan, in respect of a notification under Sec.4 dated 12.8.1971. In the said decision, we had dismissed the appeals filed by the State and confirmed the market value as determined by the Reference court at Rs. 200/ per Are for both Bagayat and Jirayat lands.

6.1 Thus, when we consider that there is no significant difference between fertility and agricultural yield between the lands of village Vijalasan and in the instant lands of village Umedpura, the only variation in the market value which would possibly arise would be on account of difference in the dates of the notifications under Sec.4 of the said Act. However, we find that the notification in the instant case is 14 months subsequent to the notification in respect of the lands of village Vijalasan. Since we have confirmed the market value of the acquired lands of village Vijalasan at Rs. 200/ per are, as it stood 14 months prior to the acquisition of the lands of the instant village Umedpura, the valuation of the lands of village Umedpura at Rs. 200/ per Are cannot possibly be considered to be excessive.

7. Thus, we find that there is absolutely no justification in reduction in the market value as determined by the Reference Court.

8. No other contention is raised.

9. These appeals are, therefore, dismissed with no orders as to costs.

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